

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116
)

To: The Commission

**REPLY COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

Michael F. Altschul
Senior Vice President, General Counsel

**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**
1250 Connecticut Ave., N.W.
Suite 800
Washington, D.C. 20036
202-785-0081

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The Cellular Telecommunications & Internet Association (“CTIA”),¹ hereby submits its Reply Comments in the above-captioned proceeding.²

I. INTRODUCTION AND SUMMARY

CTIA’s *Implementation Petition* was filed to bring to the Commission’s attention a host of policy and technical matters that must be resolved by the Commission before customers, and the wireline and CMRS providers that serve them, can begin to participate in wireless number portability (“LNP”) on November 24, 2003. While the industry has resolved many of the

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² Comment Sought On CTIA Petition For Declaratory Ruling On Local Number Portability Implementation Issues, CC Docket No. 95-116, *Public Notice*, DA 03-1753 (rel. May 22, 2003) (“*Public Notice*”); *Petition For Declaratory Ruling of the Cellular Telecommunications & Internet Association* (filed May 13, 2003) (“*Implementation Petition*”). Unless otherwise noted, comments cited in this Reply are those filed in response to the *Public Notice*.

complicated technical and policy issues involving LNP in public and private industry fora, both the wireless and wireline industries have reached impasse on those matters presented in the *Implementation Petition*.

There is little consensus in the comments about how to resolve these matters (especially between LECs and CMRS providers). Whether consumers find implementation to be smooth or painful is up to the Commission and its willingness to decide these key implementation issues. The Commission has been informed of the magnitude of these issues for several years, yet it has failed to take action. As the United States Telecom Association (“USTA”) noted, it “agrees with the basic thrust of this Petition that a number of significant, pending number portability issues must be resolved by the FCC before wireless number portability is implemented.”³ Continued neglect on the part of the Commission will ensure that LNP implementation will be in disarray and carriers will bear the brunt of consumers’ dissatisfaction. A recent release by the Precursor Group explains that the Commission’s continued “failure to give regulatory ‘guidance’ would engender consumer and provider confusion, threatening the whole WNP regulatory scheme.”⁴

Given the breadth of issues to be resolved before LNP can be fully implemented, the State Public Service Commissions (collectively, “States”) have clearly underestimated the task at hand.⁵ Their aspirations that number portability can be effectively implemented without

³ USTA Comments at 3. Cingular agreed, noting, “[d]espite several requests for Commission resolution, the Commission has failed to act.” Cingular Comments at 26.

⁴ Rudy Baca, Precursor Group, *Wireless Number Portability Negatives for Wireline* at 1, June 20, 2003.

⁵ See, e.g., Comments of the California Public Utilities Commission and of the People of the State of California (“CPUC”), Ohio Public Utilities Commission (“Ohio PUC”), Nebraska Public Service Commission, State of New Jersey Board of Public Utilities, and State of New York Department of Public Service.

resolution of these issues belie the record that clearly demonstrates otherwise. Furthermore, the States' suggestion that these issues can be resolved by merely giving "clear direction and implementation standards for wireless-to-wireless porting prior to the implementation date" and then later addressing intermodal issues,⁶ ignores the fact that almost the entirety of the issues brought before the Commission affect both intramodal and intermodal porting requests.

The record makes clear that absent specific direction from the Commission, number portability can be a train wreck for consumers. The record already proves that:

- LECs will not port numbers with CMRS providers where the customer is not located in the same rate center as the CMRS provider;
- Rural CMRS providers will not port with larger CMRS providers with whom they do not share rate centers;
- LECs will not port numbers with CMRS providers with whom they do not have interconnection agreements under section 251 of the Communications Act of 1934, as amended;
- Rural LECs will not port numbers with CMRS providers with whom they do not have direct interconnection;
- LECs will delay ports involving CMRS providers by as much as four-to-six days;
- Customers will be without E911 call-back service for up to four-to-six days when porting from a LEC to a CMRS provider;
- Rural CMRS providers may not support nationwide roaming;
- CMRS providers utilizing Type 1 interconnection offered by the LECs will be unable to port or accept ported numbers, either from wireline or wireless carriers;
- LECs may not differentiate between rating and routing points for local calls limiting the ability of consumers to port numbers to wireless carriers from incumbent LEC monopolies; and
- CMRS providers may adopt requirements which could delay a customers' ability to utilize number portability when switching to either wireless or wireline carriers.

⁶ Ohio PUC Comments at 4.

CTIA, therefore, respectfully requests expedited action on the matters raised in the *Implementation Petition* and in its earlier filed *Rate Center Petition*.⁷

II. ACQUIESCENCE TO THE RATE CENTER BOUNDARY FOR LNP IS NOT TECHNOLOGICALLY REQUIRED AND WOULD COMPLETELY UNDERMINE THE COMMISSION’S GOALS IN ORDERING WIRELESS LNP.

Intermodal number portability that is unencumbered by technical or legal restrictions is an essential element of the Commission’s LNP mandate. Although CTIA fully vetted the arguments supporting this issue in the *Rate Center Petition*, wireline carriers continue to argue that they should not be required to provide – and in fact will not provide – intermodal number portability outside local rate centers. Similarly, rural CMRS providers propose that rate centers should be used as a boundary for determining whether wireless customers will be able to port their numbers from one wireless carrier to another. The only industry consensus on this issue is that the Commission must clarify carriers’ requirement to provide number portability outside rate centers. As previously stated, the practical result of this rate center restriction ensures that nearly 90% of all wireline customers will not be able to port their numbers to a CMRS provider.⁸ As one analyst recently explained, the rate center restriction “would be antithetical to the FCC’s integrated . . . number portability scheme.”⁹

⁷ Comment Sought on CTIA Petition for Declaratory Ruling that Wireline Carriers Must Provide Portability to Wireless Carriers Operating Within Their Service Areas, CC Docket No. 95-116, *Public Notice*, 18 FCC Rcd 832 (2003); *see Petition For Declaratory Ruling of the Cellular Telecommunications & Internet Association* (filed Jan. 23, 2003) (“*Rate Center Petition*”).

⁸ *See Rate Center Petition* at 18; *See also Rate Center Petition*, Reply Comments of CTIA, at 8-9 (filed Mar. 13, 2003) (noting that only 1 in 8 wireline customers would be ported to a wireless provider under the LEC’s proposed rate center restrictions).

⁹ Baca, *supra* note 4, at 1.

Those supporting the rate center boundary maintain their position that wireless carriers must establish direct interconnection with each rate center even though the physical point of interconnection or presence within a rate center is irrelevant to a carrier's ability to provide number portability. The United States Telecom Association ("USTA") does not argue that number portability outside wireline rate centers is technically infeasible, but instead that a "point of presence" should be established to prevent ILECs from having to reconfigure their "routing, rating and billing infrastructures."¹⁰ OPASTCO notes that its members are rejecting *bona fide* requests for number portability from CMRS providers because "they [do not] have any established point of presence in the rural carriers' rate centers."¹¹ These requests for a CMRS 'point of presence' are a baseless attempt by certain LECs to add new LNP prerequisites that are not found in the Commission's rules or in the statute.¹² If the Commission were to adopt this requirement, it would effectively require CMRS providers to directly interconnect at every rate center (unnecessarily raising carriers' costs), and require CMRS providers to request a block of telephone numbers at every rate center (unnecessarily draining limited numbering resources). Instead, the Commission should make clear that, for purposes of CMRS porting, a physical point of presence in a rate center is a location that is served by the CMRS provider's switch and

¹⁰ USTA Comments at 8.

¹¹ Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") at 2.

¹² See USTA *ex parte* presentation, CC Docket No. 95-116, at 1 (May 30, 2003) (arguing that a 'physical point of presence' should be "[a] location that contains physical circuit(s) (i.e.: DS0, DS1, DS3, OCn) that provides interconnection trunking between the ILEC and the interconnecting service provider. These circuits must have one end point that resides either in the serving rate center or at the ILEC switch that serves that rate center. The other end point must terminate at the interconnecting service provider's network switching.").

wireless infrastructure. In other words, wireless carriers establish a presence in a rate center whenever a mobile subscriber can access the mobile switching center through mobile radio cell sites.

To a large extent, this debate is only one of semantics. There are no actual technical limitations to the provision of number portability from a LEC to a CMRS carrier that provides service in the same area: wireline carriers must simply query the NPAC (Number Portability Administrative Center) database and route calls to the carrier associated with the customer's number. The wireline carriers contend, however, that rerouting calls outside the original rate center may cause consumer confusion and billing problems.¹³ CTIA has addressed this issue by suggesting that wireline carriers continue to rate calls based on the rate center from which the number has been ported.¹⁴ The wireline carriers' resistance regarding rate center boundaries runs counter to their obligation to provide number portability "to the extent technically feasible." 47 U.S.C. §251(b)(2). Because no technical restrictions are posed by providing number portability outside rate centers, the wireline carriers' attempt to restrict portability on such terms amounts to an attempt to severely limit the availability of competitive carriers to their customers.¹⁵

Resolution of the Sprint-BellSouth intercarrier dispute would also help resolve the rate center dispute at issue here. Although BellSouth contends that the Commission need not resolve

¹³ OPASTCO Comments at 4; SBC Comments at iii, 8.

¹⁴ *Rate Center Petition*, Reply Comments of CTIA at 6 (filed Mar. 13, 2003). OPASTCO contends specifically that "customers calling the ported number may find that the call is suddenly subject to toll charges, which were not imposed prior to porting." OPASTCO Comments at 4. However, this situation would not occur if wireline carriers continue to rate the call based on its original rate center.

¹⁵ SBC suggests that only allowing ports to occur outside of rate centers would result in a "competitive disadvantage for wireline carriers." SBC Comments at 4.

the Sprint-BellSouth intercarrier dispute because number portability is a “distinct and separate issue,”¹⁶ clearly the same questions surrounding routing and rating calls are at issue in both proceedings. Clarification in the Sprint-BellSouth dispute would assist carriers in understanding their appropriate obligations in the number portability proceeding.

Similarly, there are no technological restrictions barring number portability between wireless carriers based on rate center boundaries. Like their wireline counterparts, rural CMRS providers are seeking to limit the ability of their customers to port. The Rural Telecommunications Group (“RTG”) and Rural Cellular Association (“RCA”) contend that they are concerned about losing customers to the larger carriers unless the Commission imposes a ‘point of presence’ model or other local interconnection method of restricting number ports.¹⁷ RCA explicitly recognized that its support of the rate center restriction is based solely on proprietary concerns, arguing that the broader area application of LNP requirements will harm “the small rural wireless carrier.” RCA explained that “[m]ore harm than good will be caused to competition if the small rural carrier’s commitment to high quality service in rural areas is overcome by a perceived advantage of number porting to another wireless carrier’s larger service area. *Numbers are a resource of each carrier that contributes to its competitive positioning in the marketplace.*”¹⁸ The whole point of LNP, of course, is to ensure that telephone numbers do not affect the ‘competitive positioning’ of the market; that carriers will instead compete on price

¹⁶ BellSouth Comments at 11.

¹⁷ See RTG Comments at 8 (suggesting that the adoption of a plan that does not impose rate center restrictions will “discriminate” against rural carriers because customers may port their numbers to larger carriers whose service areas overlap those of the rural carriers); RCA comments at 4 (“Any broader application area of LNP requirements would be highly prejudicial to small rural wireless carriers.”).

¹⁸ RCA Comments at 4 (emphasis added).

and service quality. The Commission needs to address how it will apply these principles to rural consumers.

The FCC and NANC have previously explored the technical limitations of number portability, finding only a single limitation: the ability of wireline carriers to provide *location* portability outside rate center boundaries.¹⁹ Since that finding, the Commission has specifically directed NANC to explore limitations that would impact CMRS providers' full participation in LNP,²⁰ and at no time has the Commission stated or even implied that CMRS providers must obtain their own numbering resources in a rate center before other carriers can port numbers associated with that rate center. Some carriers continue to argue that providing number portability outside rate center boundaries amounts to location portability. CTIA fully addressed this issue in its *Rate Center Reply Comments*, refuting any allegation that location portability is at stake in this instance.²¹

Notably, no carrier proposes a valid legal reason for mandating that CMRS providers offer local routing numbers or point of presence in each rate center. Nor is it obvious that wireless carriers who use radio channels to provide service to end users have any less of a "presence" in a rate center than local exchange carriers who use copper wires to reach their customers. The Commission is reminded that "Congress made very clear that the only basis that

¹⁹ North American Numbering Council Local Number Portability Administration Architecture Task Force, Architecture & Administrative Plan for LNP, "Issue - 1, Revision 3," § 7.3 (April 23, 1997), submitted as Appendix E to the North American Numbering Council Local Number Portability Administration Selection Working Group Report, dated Apr. 25, 1997 ("*LNP Working Group Report*").

²⁰ Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd 12281, ¶ 14 (1997).

²¹ See *Rate Center Petition*; Reply Comments of CTIA at 19-21.

would excuse ILECs from their statutory duty to support LNP is technical feasibility.”²² The Communications Act of 1934, as amended, defines the term “number portability” as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”²³ Nothing in the Act or the Commission’s rules requires that, when porting their number, a customer’s new carrier must first obtain a point of presence or direct interconnection to a rate center before that customer (who is remaining in the same location) may port its number to a new carrier.

Thus, as the wireline carriers and rural CMRS providers set up the problem, the issue becomes completely one of competition and preserving existing customer bases. The Commission must determine whether or not it intends to make a pro-competitive decision – that would benefit consumers – and require carriers, at a minimum, to port numbers outside rate centers when they involve wireless carriers, or whether the Commission intends to protect the hold wireline and rural CMRS providers have on their current customer base.

Consumers want intermodal number portability. A survey released June 18, 2003 by Senator Schumer indicates that nearly 17% of wireless subscribers would likely move their home wireline service to a CMRS service provider “if they could keep their land line number.”²⁴ The telecommunications research and consulting group TMNG estimates that this represents approximately 9.1 million phone lines in American homes that could be transferred to wireless

²² Sprint Comments at 3 (footnote omitted).

²³ 47 U.S.C. § 153(30).

²⁴ Press Release, Senator Charles E. Schumer, New York, *New National Survey Shows That A Third Of Cellular Users Would Switch Providers If They Could Take Their Number With Them* (Jun. 18, 2003), available at <http://schumer.senate.gov>.

phones if intermodal number portability is implemented to the full extent intended by the Commission's rules. No doubt these numbers will increase once number portability is fully deployed and consumers become more familiar with their options to port their telephone numbers between wireline and wireless services.

CTIA has fully addressed these arguments in its *Rate Center Petition* and in its most recent *Implementation Petition*. The dispute between industry segments is apparent and it is clear that the Commission must issue further guidance to resolve the scope of customers' number porting rights.

III. CARRIER AGREEMENTS TO IMPLEMENT NUMBER PORTABILITY CAN BE ACHIEVED THROUGH COMMERCIAL SERVICE LEVEL AGREEMENTS OUTSIDE THE ONEROUS PROCESSES OF SECTION 251 AND 252.

It is undisputed that some sort of commercial agreement is necessary to ensure carriers can port numbers to each other in an efficient manner. Already, OPASTCO reports that its members are rejecting *bona fide* requests for number portability from CMRS providers "because the requesting carriers do not have any interconnection agreements with the rural carriers"²⁵ Other LEC comments make clear that wireline carriers intend to employ section 251 and 252 interconnection agreement procedures to any agreement negotiated with another carrier for number portability.²⁶ Yet, as previously addressed in this proceeding, number portability is not interconnection and there is no basis for treating it as such. Moreover, section 251 does not apply to CMRS providers.

Number portability requires only the release of a customer's number to another carrier and appropriate assignment of the number to the new carrier in the Number Portability

²⁵ OPASTCO Comments at 2.

²⁶ SBC Comments at 10; BellSouth Comments at 9.

Administration Center (“NPAC”) database, not the negotiation of an interconnection agreement. Although BellSouth argues that a Commission determination to employ service-level agreements would be an inappropriate limit of the LEC’s ability to accommodate number portability through the negotiation of an interconnection agreement,²⁷ this position has no support in the Act or in Commission orders. Neither Congress nor the Commission has expressed any intent to include CMRS providers within the mandates of section 251(b) or the state jurisdiction associated with section 252.²⁸ Furthermore, BellSouth continues to ignore what CTIA has previously identified in this proceeding as the Commission’s specific authority to prescribe requirements for number portability:

[e]ach local exchange carrier has the following duties . . . (2) NUMBER PORTABILITY.--The duty to provide, to the extent technically feasible, number portability *in accordance with requirements prescribed by the Commission.*”²⁹

Thus, the Commission is free to prescribe those requirements necessary to fully deploy number portability. The use of statutory authority under sections 251 and 252 is not only wholly inappropriate, but would result in the indefinite delay of intermodal number portability and inordinate expense on all parties while carriers began the negotiation and arbitration processes in every state. CMRS providers typically have few interconnection agreements, often electing to indirectly interconnect under sections 201 and 251(a). Requiring the negotiation and/or arbitration of interconnection agreements will significantly delay the availability of number

²⁷ BellSouth Comments at 9.

²⁸ GVNW Consulting, Inc. (“GVNW”) correctly states that section 251(a) applies to all telecommunications carriers, but it has this analysis incorrect when it argues that CTIA “seeks to ignore the language in section 251(a) that applies to all telecommunications carriers, and focus its objections to section 251(b) related to all local exchange carriers.” GVNW Comments at 12-13.

²⁹ 47 U.S.C. § 251(b)(2) (emphasis added). *See also Implementation Petition* at 20.

portability to millions of Americans.³⁰ There is no technical or legal basis for linking number portability with interconnection agreements.

The California PUC states that “CTIA’s claim that the Commission must take some sort of action is overstated” because “[i]nterconnection agreements between wireless and wireline carriers already exist pursuant to section 251 and 252 . . . as a requirement for pooling.”³¹ This statement is simply untrue. CMRS providers do not have interconnection agreements for pooling purposes.³² Number pooling merely involves the transfer of numbers to and from a third-party administrator.

CTIA has proposed the use of service level porting agreements while others have proposed even lesser requirements in the form of *bona fide* requests.³³ Essentially, there is a certain amount of baseline information necessary for all carriers to share and agree upon in order to deploy number portability.³⁴ The Commission should resolve this matter by implementing a service agreement process that is both commercially effective and efficient.

³⁰ It is worth noting that few wireless carriers have interconnection agreements with each other, and those that do are not pursuant to the terms and conditions of section 251 interconnection agreements. If the Commission determines that such an agreement is a prerequisite to LNP, it will likely delay the availability of all wireless LNP.

³¹ CPUC Comments at 6.

³² See Sprint Comments at 16 (noting that CMRS carriers presently engage in number pooling without interconnection agreements).

³³ See, e.g., *id.* at 13-14 (suggesting that *bona fide* requests can be used to obtain the appropriate porting information necessary to port numbers between carriers).

³⁴ BellSouth contends that CTIA has not made the service level agreement available, and that consequently “it is just as unclear now what constitutes a service-level porting agreement as it was in January when CTIA first raised the issue.” BellSouth Comments at 10. The issue is not whether the Commission should adopt the template as drafted by CTIA, but whether it will devise a commercial arrangement (whether based on CTIA’s

IV. THE COMMISSION SHOULD ADOPT A NUMBER PORTING INTERVAL THAT PROMOTES COMPETITION.

The vast majority of commenters agree that the Commission needs to address the time in which intermodal and intramodal wireless porting must be achieved.³⁵ As a fundamental component of number portability, this issue must be resolved by the Commission before LNP can be implemented. In its *Implementation Petition*, CTIA made the case for a shorter porting interval which would promote the use of LNP and reduce the public safety concerns associated with number portability. Evidence was submitted which showed that LNP promotes competition in those nations where the porting interval is shortest and easiest for the consumer.

In opposition, several LEC commenters raise arguments that are aimed at maintaining a longer porting interval, regardless of consumer demand. These include: (1) that a porting interval is already incorporated in the Commission's rules; therefore, a rulemaking would be necessary to change the porting interval; (2) the current wireline porting interval is sufficient; and (3) it would be expensive for the LECs to implement a shorter porting interval.

Essentially, many of the LEC commenters are asking the Commission to sanction a porting interval that does not satisfy consumer demand, because, as one commenter noted, "wireline customers do not have an expectation of immediate service."³⁶ The wireline carriers explain that what is really needed is for "[a]ll carriers, wireless and wireline, [to] take responsibility for educating their end users and managing their expectations."³⁷ In the

template or not) that is less onerous than engaging in section 251 and 252 interconnection negotiation processes.

³⁵ See, e.g., USTA Comments at 4; Nextel Comments at 5; T-Mobile Comments at 8.

³⁶ BellSouth Comments at 6.

³⁷ *Id.*

competitive wireless market, however, wireless carriers do not endeavor to manage customers' expectations -- they strive to meet them. Furthermore, meeting customers' expectations is necessary if the LNP investment is to be worthwhile at all. In order to fulfill the Commission's stated goal for mandating wireless LNP, a system must be established that meets customers' expectations, not manages them.³⁸

A. The Commission's Rules Do Not Establish A Wireless Porting Interval.

Several of the LEC commenters argue that no change is needed because the porting interval is established in the Commission's rules at section 52.26(a).³⁹ This rule does not establish a wireless porting interval; rather it incorporates the recommendations of the NANC as set forth in the report prepared by the NANC's Local Number Portability Administration Selection Working Group and presented to the Commission on April 25, 1997.⁴⁰ The *Working Group Report* clearly states that it does not apply to wireless carriers and notes that the assumptions used in preparation of the report explicitly exclude the interests of wireless carriers and their customers.⁴¹ The *Working Group Report* states that discussions of potential impacts on

³⁸ See Press Release, Verizon Wireless Chief Executive Officer Delivers Call To Action To Allow Wireless Customers To Keep Their Numbers, (June 24, 2003) ("If LNP is something our customers want, it is critical that the process for them is easy, automatic and quick at the customer's request -- both for customers bringing a phone number to us, and yes, for customers leaving us with their phone number. There must be no barriers to easily switching service providers.").

³⁹ See 47 C.F.R. § 52.26(a); Qwest Comments at 2; Verizon Comments at 3, n.3.

⁴⁰ See generally, LNP Working Group Report, *supra* note 19.

⁴¹ See *id.* at 9 (§ 3.1). ("[t]he work plan executed by the LNPA Selection Working Group and related Task Forces was directed primarily to the wireline portion of the industry and did not fully address wireless concerns. The assumptions used in preparation of the 'Architecture and Administrative Plan for Local Number Portability' explicitly excluded wireless.").

wireless number portability was deferred, and it would be necessary to develop and update the findings with wireless requirements and to develop a schedule to include those changes in subsequent NANC reports.⁴² Thus, the LECs' reliance on the rule is clearly misplaced.

Subsequent NANC reports discussed the porting interval for wireless carriers; however, the Commission has yet to act on them.⁴³ Although the wireless porting interval issue was presented to the Commission on three separate occasions, beginning in 1998, the Commission has failed to issue a decision on the matter. The three NANC Reports that are discussed in detail in the *Implementation Petition* have never been incorporated into the Commission's rules. Therefore, section 52.26(a) clearly does not incorporate standards or rules for the porting interval (or any other aspect of CMRS LNP for that matter) that apply to wireless carriers.

Alternatively, several LEC commenters argue that the Commission is not free to declare a porting interval different from section 52.26(a) unless a rulemaking is promulgated to change the porting interval.⁴⁴ The California PUC goes so far as to claim that CTIA has "just formally raised . . . before the Commission" the issue of the porting interval.⁴⁵ These commenters fail to recall that the Commission already sought comment on this issue five years ago.⁴⁶ Unfortunately, the Commission never issued an order in response to the Public Notice adopting

⁴² *Id.* at § 3.2.

⁴³ *See Implementation Petition* at 10.

⁴⁴ *See* Qwest Comments at 2-4 ("the Commission is not free to 'declare,' as requested by the *CTIA Petition*, that porting intervals different from those incorporated in 47 C.F.R. § 52.26(a) should be established." *Id.* at 2.); Verizon Comments at 4.

⁴⁵ *See* CPUC Comments at 4 n.4.

⁴⁶ *See Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Local Number Portability Administration Wireline and Wireless Integration*, CC Docket 95-116, *Public Notice*, 13 FCC Rcd 17342 (1998).

the NANC recommendations, notwithstanding the fact that several commenters discussed the porting interval.⁴⁷ Additional rulemaking on this subject is thus not required.

B. The Wireline Porting Interval Is Not Sufficient For CMRS LNP.

Many of the LECs further support the adoption of an inconsistent porting interval or one where ports involving wireless carriers could take days to complete.⁴⁸ Alternatively, they would support the imposition of the wireline interval on all carriers.⁴⁹ Neither of these proposals is sufficient as they would render the Commission's LNP mandate hollow.

As CTIA explained in its *Implementation Petition*, a long porting interval will frustrate the very purpose of the Commission's LNP rules because consumers will not accept it.⁵⁰ Many other commenters also recognize that there should be a consistent porting interval for all types of ports.⁵¹ As Cingular explained, "[w]ithout uniform, enforceable porting intervals for wireless-wireline and wireless-wireless ports, the porting of numbers to or from CMRS carriers will be chaos."⁵² Seamless portability regardless of the type of originating or receiving carrier is

⁴⁷ In its comments, AT&T encouraged the Commission "to take steps necessary to ensure that a meaningful reduction in porting intervals remains a priority for all carriers." AT&T Comments at 6 (filed Aug. 10, 1998). Sprint PCS stated, "[a] long wireline-to-wireless porting interval, such as three days, will serve as a disincentive to new wireless customers, and so is competitively harmful." Sprint PCS Comments at 10 (filed Aug. 10, 1998).

⁴⁸ See Verizon Comments at 6; BellSouth Comments at 3; SBC Comments at 5.

⁴⁹ See, e.g., SBC Comments at 4; Qwest Comments at 1; BellSouth Comments at 3.

⁵⁰ See *Implementation Petition* at 7-8, 14-15 (discussing recent reports by wall street analysts JP Morgan and Merrill Lynch that confirm consumers are more likely to port their number if there is a shorter porting interval).

⁵¹ See Nextel Comments at 5; Cingular Comments at 26.

⁵² Cingular Comments at 26.

essential if LNP is going to be worth the candle. Efforts to make it more difficult or complicated will only serve to stifle competition and render LNP a mandate without a cause.

In today's competitive wireless market, consumers expect to walk into a wireless retail location, place their order, and carry a working telephone out of the store with them. SBC says that in a wireline-to-wireless port, the consumer will not be greatly inconvenienced because during the four-day porting interval the consumer will still have access to the same wireline service.⁵³ In other words, customers who wish to disconnect their wireline service will continue to pay for wireline service until the LEC has seen fit to complete the port. This idea reinforces the LEC mantra that consumers' expectations need to be managed, and ignores the preferences of consumers who prefer immediate wireless service.

Verizon further questioned CTIA's reliance upon independent analyst reports that predict that a long porting interval will adversely affect number portability.⁵⁴ CTIA cited several industry reports that demonstrate that the shorter the porting interval, the more likely consumers are to port their numbers.⁵⁵ Of course, the length of the porting interval is not the sole determinative factor in consumers' use of LNP, rather the data make clear that it is one influential factor.⁵⁶ In most countries, the longer the length of the port, the less impact LNP has

⁵³ SBC Comments at 7.

⁵⁴ See Verizon Comments at 7 (noting that the impact of number portability was mixed in Australia where the porting interval is less than two hours).

⁵⁵ See JP Morgan North American Equity Research, *Wireless Number Portability: Not Positive for ROIC, but Potential Upside Exists* (rel. Apr. 14, 2003); Merrill Lynch, *Wireless Services. WNP: Coming in November 2003 or Not?* (rel. Jan. 9, 2003). See also *Implementation Petition* at 14-15.

⁵⁶ This is proven today, in the U.S., where there is already significant churn in the domestic wireless industry without LNP. Nevertheless, LNP, if mandated, should be implemented

on competition in the market. A variety of factors will also influence a consumer's decision to switch service providers; such as price and service quality. However, the reports make clear that the porting interval is an important factor.

Several LEC commenters further point out that the existing number porting system has worked well for them, there have been no complaints, and many consumers have ported their wireline numbers since the introduction of wireline number portability.⁵⁷ These commenters miss the point that while this system may work for the LECs, it will not work when CMRS carriers begin porting. In a LEC-LEC port, the customer continues to receive service over the same facilities from its original carrier until the service is switched over. There is no noticeable change in service, or CPE, until the customer receives a bill from the new carrier. Porting that involves wireless service is inherently different. A customer must obtain a mobile handset and have it activated. The LECs apparently want the Commission to adopt a porting interval that will require consumers to come back four to six days later to get their wireless handset service activated. A four business day interval is impractical, not to mention abusive to consumers, when one considers the manner in which wireless services are activated. No one has suggested making wireline ports so onerous, nor would the Commission stand for it.

It is important to recognize that resolution of the porting interval is necessary for both intermodal and intramodal ports. Since there is no codified porting interval for wireless to wireless ports, wireless carriers are not obligated to complete ports in the amount of time set forth in the NANC reports and could elect to complete ports in any amount of time they

to maximize the competitive benefits, and these reports explain that the length of the porting interval is an important factor in maximizing competition.

⁵⁷ See Verizon Comments at 6 (noting there has been no complaint of which Verizon is aware about the length of the porting interval).

choose.⁵⁸ Sprint stated this clearly in its comments: “[w]hile the Commission has adopted porting intervals for LEC-to-LEC ports, these guidelines are incomplete because they do not address all porting circumstances, including CMRS-to-CMRS, CMRS-to-LEC, and LEC-to-CMRS ports.”⁵⁹ Thus establishment of a porting interval is clearly a matter of great importance to both intermodal and intramodal porting. It is also essential to ensure that all types of carriers implement a consistent porting interval to prevent consumer confusion.⁶⁰

With respect to concerns over public safety, several LECs argue that if a period of mixed service presents a threat to public safety, the Commission should require carriers to follow the existing LEC porting interval.⁶¹ Prohibiting mixed service will not allay any concerns over public safety. As soon as a customer obtains a wireless handset (and without regard to how long the customer has to wait for the port to be effective), that customer has the ability to contact 911 in an emergency.⁶² The PSAP, however, will be unable to call-back the caller because of delays in completing the port; this is true regardless of whether mixed service is offered or not.

Moreover, the mixed service period enables consumers to have a working telephone at all times, even when they change service providers. It ensures that customers disconnecting wireline service can initiate wireless service immediately. Similar to wireline ports, mixed

⁵⁸ See *Verizon Wireless Comments* at 2 (noting that no enforceable wireless to wireless porting interval has been established).

⁵⁹ Sprint Comments at 5.

⁶⁰ RTG argues that the Commission should not compel rural carriers to implement a two and half hour porting interval, because that is unduly burdensome to rural carriers “who lack the resources, both human and technical, to implement such a ‘New York-style’ interval.” RTG Comments at 12.

⁶¹ See SBC Comments at 9; Verizon Comments at 8-9.

⁶² See 47 C.F.R. § 20.18(b) (requiring the completion of 911 calls without prior validation).

service ensures no disruption in service. Without it, the likelihood of intermodal ports will be severely diminished. To the extent mixed service creates concerns over public safety, the solution is to address these concerns (*i.e.* shorten the interval), not eliminate mixed service.

BellSouth also argues that a longer porting interval is the most effective approach to minimizing the public safety risk and to ensure that the information included in the various databases is as accurate and consistent as possible.⁶³ Because LEC portability systems are largely manual, it apparently takes four-to-six days to ensure an accurate port. In its *Implementation Petition*, CTIA stated that the wireline industry could shorten the porting interval by agreeing to automation and uniformity across all service providers for the porting process as the NANC proposed.⁶⁴ NENA not only recognizes that common standards could help shorten the porting interval, but it also notes that “several aspects of 9-1-1 service could benefit from such an agreement.”⁶⁵ As several commenters note, many LECs and smaller carriers have refused to agree to common standards or automated, uniform systems; however, automation is a critical step to both help shorten the porting interval and to help ensure that critical 911 databases are properly maintained.⁶⁶

⁶³ See BellSouth Comments at 8.

⁶⁴ See *Implementation Petition* at 10.

⁶⁵ See Comments of the National Emergency Number Association (“NENA”) at 4. Note that the CPUC summarily dismisses CTIA’s concerns regarding porting intervals and disregards the public safety aspects of the interval problem completely. CPUC Comments at 5 (stating that consumers can merely be alerted of the public safety issues through “standardized consumer education script”).

⁶⁶ See T-Mobile Comments at 7.

Essentially, several commenters largely oppose a shorter porting interval because it will raise their costs.⁶⁷ The Commission, however, has already made its cost-benefit analysis and determined that number portability is critical, despite implementation costs.⁶⁸ More importantly, the relevant economic question is not whether millions of dollars will be spent upgrading LEC systems, but whether the billions of dollars spent to implement LNP will be permitted to lie fallow if consumers do not avail themselves of LNP for intermodal competition.

As many commenters recognize, the *Implementation Petition* advocates a pro-competitive porting interval that allows consumers' expectations to be met.⁶⁹ A primary goal the Commission established in imposing LNP for CMRS providers is fostering competition both among wireless and between wireless and wireline service providers.⁷⁰ The Commission should act to adopt a standard that will promote competition and meet consumer demand.

⁶⁷ See, e.g., SBC Comments at 5 (noting that automation and uniformity will come only with the expenditure of significant time and cost to the carrier); RTG Comments at 12 (noting that a shorter porting interval would be expensive for many rural carriers to implement.). Several commenter also notes that the Commission would have to authorize additional cost recovery to accomplish this updating. See Qwest Comments at 6.

⁶⁸ See Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 01-184, *Memorandum Opinion and Order*, 17 FCC Rcd 14972, ¶ 1 (2002) ("Verizon Wireless LNP Forbearance Order") ("We also find that the competitive reasons that lead the Commission to require wireless LNP remain valid today and that there are sufficient competitive and consumer benefits in terms of innovative service offerings, higher quality services, and lower prices to justify the cost of implementing LNP in the near future.").

⁶⁹ See, e.g., T-Mobile Comments at 7 (urging the Commission to adopt a porting interval that promotes competition); Nextel Comments at 5 (arguing that the Commission should shorten the porting interval); Rural Cellular Association Comments at 5 ("Prompt fulfillment of porting requests is essential to the purpose of porting.").

⁷⁰ See *Rate Center Petition* at 12-16.

It is clear that the Commission's objectives with respect to promoting intermodal competition will fail to materialize without attention to this matter. This issue has been pending before the Commission for nearly five years, and in that time, has been raised repeatedly by the NANC and commenters alike. Absent Commission action, the underlying purpose of the rule will be frustrated as consumers seeking to port numbers are confronted with seemingly random, but lengthy, porting intervals. CTIA urges the Commission to address the porting interval issue.

V. THE COMMISSION MUST RESOLVE SPECIFIC CMRS LNP ISSUES.

The *Implementation Petition* asked for clarification of three CMRS-specific issues; specifically it sought clarity on which markets are part of the largest 100 MSAs, whether the *bona fide* request requirement will remain an element of the LNP rules, and when small and rural carriers will be required to support nationwide roaming. Last week, the Commission released the *NRO Fourth Report and Order* clarifying two of these issues.⁷¹ The Order concludes that the 100 largest MSAs include those MSAs identified in the 1990 U.S. Census reports as well as those areas included in any subsequent U.S. Census report of the 100 largest MSAs.⁷² The Order also affirms the *bona fide* request requirement will remain an element of the LNP rules; requiring carriers to deploy LNP in switches within the 100 largest MSAs for which another carrier has made a request for the provision of LNP. Clarification, however, is still needed to maintain the availability of nationwide roaming.

⁷¹ In the Matter of Numbering Resource Optimization, CC Docket Nos. 99-200, 96-98 and 95-116, *Fourth Report and Order in CC Docket No. 99-200 and CC Docket No. 95-116, and Fourth Further Notice of Proposed Rulemaking in CC Docket 99-200*, FCC 03-126 (rel. June 13, 2003) ("*NRO Fourth Report and Order*").

⁷² This decision imposes significant burdens on smaller carriers with *de minimis* operations in the largest MSAs.

A. The Commission Must Clarify Carriers' Obligations To Support Nationwide Roaming.

According to Commission rules and orders, CMRS carriers must support nationwide roaming for pooled numbers by November 24, 2002 and ported numbers one year later.⁷³ This requirement ensures that if a customer with a ported or pooled number roams into another CMRS carrier's network, that CMRS carrier will support that customer's ability to make and receive calls.⁷⁴ Support for nationwide roaming is a critical element of wireless service, and the Commission needs to ensure that this essential system is maintained.⁷⁵

The *NRO Fourth Report and Order* attempts to bring some clarity to this issue in a footnote; however, the Order fails to provide the needed certainty. The footnote states that all CMRS carriers were required to support nationwide roaming for customers with pooled numbers by November 24, 2002, regardless of whether they are receiving numbering resources from thousands-block number pools by that date.⁷⁶ It also states that carriers choosing not to implement MIN/MDN separation for pooling remain obligated to deliver valid call back numbers to PSAPs.⁷⁷

⁷³ See 47 C.F.R. § 52.31.

⁷⁴ *Verizon Wireless LNP Forbearance Order* ¶ 31. See also Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations and Telephone Number Portability, WT Docket No. 98-229; CC Docket No. 95-116, *Memorandum Opinion and Order*, 14 FCC Rcd 3092, ¶ 41 (1999) (stating that all wireless carriers even those outside major markets must configure their networks to support number portability).

⁷⁵ Many of the commenters note the need for clarification on this issue. See, e.g., Verizon Comments at 11; Verizon Wireless Comments at 7; Cincinnati Bell Wireless ("CBW") Comments at 5-7.

⁷⁶ See *NRO Fourth Report and Order* at n. 34.

⁷⁷ See *id.*

These terse statements do not fully clarify small and rural carriers' obligation to support nationwide roaming.⁷⁸ Clarification of this issue is critical for the wireless industry which was founded on seamless nationwide networks, and it is critical for consumers who need to know about changes in their ability to roam before deciding if they want to port their number.⁷⁹

Many rural and small carriers have sought partial waivers and extensions of the deadline to provide this service.⁸⁰ As CTIA's *Implementation Petition* states, these waiver and extension requests must also be resolved. The Commission needs to both decide the pending requests and fully clarify wireless carriers' obligation to support nationwide roaming.

B. The Commission Must Clarify Type 1 Interconnection Porting Obligations.

Several commenters note that the Commission must provide input and guidance on the issues specific to the porting of wireless telephone numbers that use a Type 1 interconnection arrangement.⁸¹ The *Implementation Petition* clearly outlined the issue concerning number

⁷⁸ See RCA Comments at 6 (noting that “[u]ncertainty in this area adds to the burden of small and rural carriers whose financial resources for LNP and thousands block number pooling are limited.”).

⁷⁹ Congress discussed the importance of a nationwide roaming system when enacting section 332(c)(3)(A) and stating that one of its goals was, “[t]o foster the growth and development of mobile services that, by their nature, operate without regard to state lines.” H.R. Rep. No. 103-111, at 260 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 587. See also CBW Comments at 5-6 (“CBW believes that if roaming is not supported by all carriers nationwide, the benefits of number portability to consumers will be offset by the loss in service when they travel outside their home areas.”); Verizon Comments at 11 (“[t]he Commission also must decide whether all wireless carriers must implement the industry-standard for supporting roaming.”).

⁸⁰ See, e.g., Petition for Waiver by Pine Belt PCS, and Pine Belt Cellular, Inc., CC Docket Nos. 99-200 and 95-116, WT Docket No. 01-184 (filed Nov. 22, 2002); Petition for Limited Waiver and Extension of Time by Kodiak Wireless, LLC, CC Docket No. 99-200 (filed Nov. 22, 2002).

⁸¹ See BellSouth Comments at 12; Cingular Comments at 28; Verizon Comments at 11 (stating, “the Commission should also resolve any disputes about how ports of numbers

portability by wireless customers who are served by carriers that purchase Type 1 interconnection from LECs.⁸² CTIA explained that because number portability for Type 1 interconnection always involves a LEC, it is necessarily more complicated. Thus, consensus on portability procedures for Type 1 lines, although essential, is absent.⁸³

Although commenters may disagree on the proper solution, it is clear that the Commission needs to act.⁸⁴ Since the industry has not been able to reach consensus and the November 2003 deadline is quickly approaching, the Commission needs to provide final direction and put an end to the uncertainty.⁸⁵

used by CMRS providers with Type 1 interconnection should be accomplished so that all the affected providers can get ready to effectuate such ports.”).

⁸² *See Implementation Petition* at 26-29.

⁸³ *See also Rate Center Petition*; BellSouth Reply Comments at 2 (filed Mar. 13, 2003).

⁸⁴ Cingular states that resolution of this issue may require adopting a process for the exchange of customer validation information for Type-1 numbers. Cingular Comments at 28.

⁸⁵ BellSouth advocates a separate rulemaking to consider this issue. *See* BellSouth Comments at 12. As CTIA explained in the *Implementation Petition*, the Commission has already determined that LECs and CMRS providers must port numbers to one another with no exception for Type 1 carriers. A separate rulemaking would only serve to delay LNP. *See Implementation Petition* at 29.

VI. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission address the matters raised in the *Implementation Petition* and implement LNP in a manner that achieves the Commission's stated objectives.

Respectfully submitted,

**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**

/s/ Michael F. Altschul

Michael F. Altschul
Senior Vice President, General Counsel

**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**

1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 785-0081

Its Attorney

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